



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

Date: OCT 28 2003



Contact Person:

ID Number:

Telephone:

Employer Identification Number:

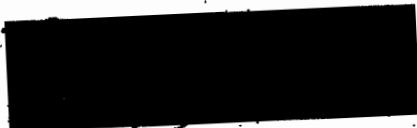
Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(a) of the Internal Revenue Code as an organization described in section 501(c)(3). Based on the information submitted, we have concluded that you do not qualify for exemption under that section. The basis for our conclusion is set forth below.

The information submitted indicates that you were incorporated on [REDACTED], as a nonprofit corporation under the laws of the state of [REDACTED] and organized exclusively for charitable and educational purposes. More specifically, you were formed to own, operate, and maintain nonsectarian kindergarten, elementary, secondary, and other schools below the college level. In [REDACTED] the public schools in [REDACTED] County, the county where you are located, were subject to court-ordered desegregation. In [REDACTED] you were recognized as tax exempt under section 501(c)(3) of the Code. Effective [REDACTED], your tax-exempt status was revoked because you failed to show that you operate in a racially nondiscriminatory manner, and you failed to meet the requirements of Revenue Procedure 75-50, 1975-2 C.B. 587.

On [REDACTED], you adopted a racially nondiscriminatory policy. A statement of your nondiscriminatory policy appears on the application for admission and the parents' handbook that you submitted with your letter of [REDACTED]. You have enclosed a copy of the notice of your nondiscriminatory policy that was published in the [REDACTED] on [REDACTED]. It is two newspaper columns wide, captioned "Notice of Nondiscriminatory Policy as to Students" in twelve-point type, with the text printed in twelve-point type. You stated that one African-American student applied for admission in [REDACTED] and was accepted but chose not to enroll. No members of your faculty and administrative staff are African-American. In your letter of [REDACTED], you stated that you do not have a formal outreach program directed at potential minorities or others. You have stated that outreach is directed towards the entire community. As examples you cited the egg hunt you sponsored on Easter Week 2003, and several instances of faculty members providing volunteer assistance to community activities. You are considering establishment of a minority scholarship assistance program once you are on firmer financial footing.

Section 501(c)(3) of the Code provides, in part, for the exemption from federal income tax of organizations organized and operated exclusively for educational purposes.



Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3) of the Code, an organization must be both organized and operated exclusively for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, it is not exempt.

Revenue Ruling 71-447, 1971-2 C.B. 230, provides that a private school which does not have a racially nondiscriminatory policy as to students does not qualify for exemption from federal income tax under section 501(c)(3) of the Code. It defines a racially nondiscriminatory policy as meaning "that the school admits the students of any race to all the rights, privileges, programs, and activities generally accorded or made available to students at that school; and that the school does not discriminate on the basis of race in administration of its educational policies, admissions policies, scholarship and loan programs, and athletic and other school administered programs."

Revenue Procedure 75-50, *supra*, sets forth guidelines and recordkeeping requirements for determining whether private schools that are applying for recognition of exemption from federal income tax under section 501(c)(3) of the Code or are presently recognized as exempt from tax, have racially nondiscriminatory policies as to students. Section 2.02 provides that a school must show affirmatively that it has adopted a racially nondiscriminatory policy regarding students that this policy is made known to the general public and that ever since adoption of the policy the school has operated in accordance with it. Section 4.01 requires a school to include a statement in its charter, bylaws, or other governing instrument, or in a resolution of its governing body, that it has a racially nondiscriminatory policy as to students and therefore does not discriminate against applicants and students on the basis of race, color, and national or ethnic origin. Section 4.03 provides that the school must make its racially nondiscriminatory policy known to all segments of the community served by the school by publishing at least once a year a notice of its racially nondiscriminatory policy in a newspaper of general circulation in the community. Such notice must be captioned in at least 12-point bold face type as a notice of nondiscriminatory policy as to students. Section 4.032(c) provides, in part, that whether a particular school follows a racially nondiscriminatory policy will be determined on the basis of the facts and circumstances of each case.

In *Green v. Connally*, 330 F. Supp. 1150 (D. D.C. 1971), *aff'd sub nom. Coit v. Green*, 404 U.S. 997 (1971), and in the revised injunction orders issued on May 5 and June 2, 1980, the Internal Revenue Service is prohibited from:

according ... and from continuing the tax-exempt status now enjoyed by all Mississippi private schools or the organizations that operate them, which:

(1) have in the past been determined in adversary or administrative proceedings to be racially discriminatory; or were established or expanded at or about the time the public school districts in which they are located or which they serve were desegregating, and which cannot demonstrate that they do not racially discriminate in admissions;

employment, scholarships, loan programs, athletics, and extracurricular programs.

(2) The existence of conditions set forth in paragraph (1) herein raises an inference of present discrimination against blacks. Such inference may be overcome by evidence that clearly and convincingly reveals objective acts and declarations establishing that such is not proximately caused by such school's policies and practices. Such evidence might include, but is not limited to, proof of active and vigorous recruitment programs to secure black students or teachers, including students' grants in aid; or proof of meaningful public advertisements stressing the school's open admissions policy; or proof of meaningful communication between the school and black groups and black leaders within the community and any other similar evidence calculated to show that the doors of the private school and all facilities and programs therein are indeed open to students or teachers of both the black and white races upon the same standard of admission or employment.

In Prince Edward School Foundation v. United States, 478 F. Supp. 107 (D.D.C. 1979), aff'd D.C. Cir. June 30, 1980, cert. denied, 450 U.S. 944 (1981), the court held that private schools administering racially discriminatory admissions policies are excluded from tax-exempt status under section 501(c)(3) of the Code. The court further held that the foundation had failed to meet its burden of establishing its entitlement to exemption under section 501(c)(3) because the foundation's record was completely devoid of evidence that it was administering a nondiscriminatory admissions policy. The court also stated that the inference that the plaintiff administered a racially discriminatory policy may be drawn from the circumstances surrounding the school's establishment. Similar inferences as to the existence of a racially discriminatory policy based on facts surrounding a school's establishment and lack of minority enrollment have been drawn by other courts. See e.g. Norwood v. Harrison, 382 F. Supp. 921 (N.D. Miss. 1974) on remand from the Supreme Court, 413 U.S. 455 (1973) and Brumfield v. Dodd, 425 F. Supp. 528 (E.D. La. 1978).

In Norwood v. Harrison and in Brumfield v. Dodd, the courts analyzed whether private schools were racially discriminatory. The courts held that a prima facie case of racial discrimination arises from proof (a) that the school's existence began close upon the heels of the massive desegregation of public schools within its locale, and (b) that no blacks are or have been in attendance as students and none is or has ever been employed as a teacher or administrator at the private school. The actual enrollment of one African-American student was deemed not determinative in the case of West End Academy, which was addressed by the court in Brumfield v. Dodd, supra. The enrollment of one African-American student is not enough to rebut the inference of discrimination.

In Bob Jones University v. United States, 461 U.S. 574 (1983), the Supreme Court found that petitioner, a nonprofit private school that prescribes and enforces racially discriminatory admissions standards on the basis of religious doctrine, did not qualify as a tax-exempt organization under section 501(c)(3) of the Code. The court held that racially discriminatory private schools violate a fundamental public policy and cannot be viewed as conferring a public benefit within the meaning of common law standards of charity and congressional intent.

underlying section 501(c)(3).

In Calhoun Academy v. Commissioner, 94 T.C. 284 (1990), the Tax Court held that a private school failed to show that it operated in good faith in accordance with a nondiscriminatory policy toward black students. The school was formed at the time of desegregation of the public schools, and never enrolled a black student or employed a black teacher. The school and its students participated in some educational and vocational programs and other school-sponsored activities that directly involved blacks. The court noted:

In today's world, interaction with persons of another race in interscholastic and community activities is unavoidable by all but the most reclusive or isolated groups. Petitioner's burden is not met by showing that it interacts with outsiders. The relevant criteria deal with restrictions on those who may become insiders, i.e. students at the school.

The court concluded that the school did not qualify for exemption under section 501(c)(3) of the Code.

All facts and circumstances must be considered in determining whether a private school has shown that it has overcome an inference of racial discrimination. Relevant factors include the following: actual enrollment of African-American students; active and vigorous recruitment of African-American students and teachers; financial assistance for African-American students; adoption of a policy of racial nondiscrimination; effective communication of such policy to members of the African-American community, including publication of the policy; meaningful contact with members of the African-American community; and, public disavowal or repudiation of previous statements that are inconsistent with a policy of nondiscrimination.

The information submitted indicates that you were formed at the time of desegregation of the public school district in which you are located, and operated for a lengthy period of time without enrolling any African-American students. Furthermore, you operated for a substantial period of time without the adoption or publication of a racially nondiscriminatory policy. The foregoing information raises an inference of present discrimination against blacks as set forth in the above cited court decisions. In order to be exempt from federal income tax, a private school subject to an inference of discrimination must provide clear and convincing evidence that it now operates in a good faith racially nondiscriminatory manner. Furthermore, such a school must provide persuasive evidence that the absence of black enrollment is not attributable to the continuation of the school's past policies. Mere adoption of a nondiscriminatory policy and publication of such a policy is insufficient for such a school to demonstrate that it is operating in a bona fide nondiscriminatory manner in accordance with Rev. Proc. 75-50, supra.

You formally adopted a racially nondiscriminatory policy. A statement of your nondiscriminatory policy appears in your application for admission and your parents' handbook, and on your application. Your published notice of nondiscrimination satisfies section 4.03 of Rev. Proc. 75-50. However, the information submitted contains no evidence of actions such as active and vigorous recruitment of African-American students and teachers; financial assistance for African-American students, or on-going communication with members of the African-

American community. The facts and circumstances do not show that you have made an intensive and comprehensive effort at outreach directed specifically to the black community, which could possibly result in the enrollment of black students and current employment of black teachers and administrators. Like the school described in Calhoun Academy v. Commissioner, supra, your interaction with black persons in the community is insufficient to demonstrate that you operate in a bona fide racially nondiscriminatory manner with respect to the enrollment of students and hiring of faculty. You indicate that you have to date accepted one African-American student for the [REDACTED] school years, but that student chose not to enroll. While the enrollment of African-American students is generally the most convincing evidence of the existence of nondiscriminatory policy as to students, it is not determinative, as all the facts and circumstances concerning a school's operations must be considered. We note that there is no evidence that the application by and acceptance of this student was the result of active and vigorous recruitment. We also note that your publication of a racially nondiscriminatory policy is of a relatively recent date.

All of the pertinent facts and circumstances lead us to conclude that you have failed to demonstrate that you have taken sufficient steps to overcome the inference of discrimination set forth in the above mentioned court cases. Thus, you have failed to establish that you operate in a bona fide racially nondiscriminatory manner.

Accordingly, you are not operated exclusively for exempt purposes under section 501(c)(3) of the Code, and thus you do not qualify for recognition of exemption as an organization described in section 501(c)(3). You must file federal income tax returns.

Contributions to you are not deductible under section 170 of the Code.

You have the right to protest this ruling if you believe it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement, signed by one of your officers, must be submitted within 30 days from the date of this letter. You also have a right to a conference in this office after your statement is submitted. You must request the conference, if you want one, when you file your protest statement. If you are to be represented by someone who is not one of your officers, that person will need to file a proper power of attorney and otherwise qualify under our Conference and Practices Requirements.

If you do not protest this ruling in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) of the Code provides, in part, that a declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the United States Court of Federal Claims, or the District Court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service.

If we do not hear from you within 30 days, this ruling will become final and a copy will be forwarded to the Ohio Tax-Exempt and Government Entities (TE/GE) office. Thereafter, any questions about your federal income tax status should be directed to that office, either by calling

[REDACTED]

877-829-5500 (a toll free number) or sending correspondence to: Internal Revenue Service, TE/GE Customer Service, P.O. Box 2508, Cincinnati, OH 45201. The appropriate State Officials will be notified of this action in accordance with Code section 6104(c).

When sending additional letters to us with respect to this case, you will expedite their receipt by using the following address:

Internal Revenue Service

[REDACTED]  
1111 Constitution Ave, N.W.  
Washington, D.C. 20224

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

|S|

[REDACTED]  
Acting Manager,  
Exempt Organizations  
Technical Group 4